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Montana

Department of Labor and Industry

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73**Fact Sheet – HB73****Oversight of Unlicensed Practice in Professional Occupations****Sponsor: Galen Hollenbaugh****Program Contact: Jack Kane, Business Standards Division Administrator 841-2243**

This bill was drafted because the unlicensed practice of a regulated occupation creates a risk of harm to the public and people who pay the price to qualify for a license and who continue to pay for the right to work at their occupation should not have to compete with those who can or will not meet licensure requirements.

- Currently, those who practice a licensed occupation without a license may be criminally prosecuted for a misdemeanor crime, or the licensing board may request a district court to enjoin the unlicensed practice.
 - a. However, criminal prosecutions almost never occur because county attorneys are too busy and they view unlicensed practice as the responsibility of the boards.
 - b. Injunctions are seldom pursued because it is expensive, boards recover no money, and the most that can be obtained is an order providing that the person must stop doing what the law already prohibits. Then, if the unlicensed practice continues, the board must go back to court and prove unlicensed practice in violation of the injunction. At that point, after significant expenditures the board's time and money, the unlicensed person may be fined of up to \$5,000, but the board receives none of it.
- Regulated occupations protect all of the public, but only licensees pay to enforce licensing laws against themselves *and* against unlicensed practitioners. Ironically, unlicensed people must be brought to a district court to be ordered to stop doing what the law already prohibits, while licensees are subject to administrative actions, fines and practice restrictions.
- Unlicensed people make money doing what licensees invest years of school or training to do. Due to the lack of enforcement tools, the benefits sometimes outweigh the costs of doing business without a license.
- The penalties need to be sufficient to deter unlicensed practice, and the boards need to recover money for their efforts. Several licensing boards raised licensing fees this past year, partly due to costs associated with unlicensed practice.
- This bill provides for an administrative action against unlicensed persons; the administrative action will be initiated and heard in the same manner, and will afford the same measure of due process, as actions initiated and heard against licensees.
- The action must be preceded by a finding of reasonable cause and must be heard by an impartial hearing examiner who submits a proposed order to the board. After the board enters a final order, either party may petition the district court for judicial review.
- This bill makes it possible for those who violate licensing laws to be subject to an order to cease and desist, a civil penalty, and costs and attorney fees, depending on the extent of the unlicensed practice. It also provides that violations of an order to cease and desist may result in higher penalties and more fees and costs.
- The bill provides for boards to receive all but one-half of penalties, and boards may enforce and execute upon an administrative order in the same manner that a person may enforce and execute upon a judgment awarded by a Montana district court.